TEH TECK HUAY v. THOR HOR CHOOI

[C. A. (Mathew C.J., Murray-Aynsley C.J.(S), and Spenser Wilkinson J.) June 12, 1954]

[K.L. — F.M. Civil Appeal No. 7 of 1954]

Land laws — Agreement for sale of land — Land Code (Cap. 138), s. 134 — Caveat — Lien under — Equity and priority.

In this case the appellant on May 3, 1950 entered into an agreement for the sale of certain property at a price of $1,500. On November 29 he presented a caveat giving notice claiming his interest in the land under the agreement of May 3, 1950 and thereby forbidding "absolutely the registration of any transfer charge or lease of the said land ....." Earlier, on July 14, 1950 the respondent had lent a sum of money to the registered proprietors of the land and taken as collateral security the title deeds. On August 29, 1951 the appellant instituted proceedings against the registered proprietors and another, and obtained an order that on payment of the balance of the agreed purchase price, the defendants do transfer to him the lands. Subsequently on October 14, 1952 an order was made against the registered proprietors to execute a valid registrable transfer of their respective shares in the said lands to the appellant, and on April 10, 1953 the appellant's solicitors presented a memorandum of transfer to the Collector of Land Revenue, Klang, for registration. This was refused on the ground that there was a subsisting caveat lodged against the lands by the respondent on November 12, 1952.

Held: (1) according to the order of Court, the appellant was entitled to have a memorandum of transfer executed by the Registrar 14 days after the date of the order which was more than a fortnight in time before the respondent registered his caveat and created a lien under s. 134 of the Land Code; (2) both equity and priority were therefore in favour of the appellant.

COURT OF APPEAL, appeal against order dismissing an Originating Summons.

Morris Edgar for the appellant.

D. G. Ironside for the respondent.

Cur. Adv. Vult.

Mathew C.J. (with whom **Murray-Aynsley C.J. (S.)** and **Spenser Wilkinson J.** agreed) : — This is an appeal against an order dismissing an Originating Summons. On the 3rd May 1950 the appellant entered into an agreement for the sale of certain property at a price of $1,500. On the 29th November 1950 he presented a caveat which reads :—

"Take notice that I, Teh Teck Huay of Klang, claiming to have an interest under an agreement of sale dated 3rd May 1950 made by the caveatee, a copy of which is hereto attached, in the land held under E.M.R. Nos. 6952, 6953, and 6955 Mukim of Klang in the district of Klang in the State of Selangor whereof Govindasamy son of Ramiah and Thiaraja son of Kaluvan as representatives of Vythilingham Pillay deceased of Club Road, Klang, is the proprietor do hereby forbid absolutely the registration of any transfer charge or lease of the said land executed by the said Govindasamy and Thiaraja as representatives of Vythilingham deceased presented subsequently to this caveat until this caveat be withdrawn by me the caveator or by order of the Court or until after the lapse of twenty-one days from the date of the service of notice on me by the caveatee at the address given above."

On the 14th July 1950 the respondent lent a sum of money to the registered proprietors of the same land, and took as collateral security the title deeds. On the 29th August 1951 the appellant instituted proceedings against the registered proprietors and another, and obtained an order that, on payment of the balance of the agreed purchase price, the defendant do transfer to him the lands.

On the 14th October 1952 an order was made against the registered proprietors to execute a valid registrable transfer of their respective shares in the said lands to the appellant. On the 10th April 1953 the appellant's solicitors presented a memorandum of transfer to the Collector of Land Revenue, Klang, for registration, but he refused to do so, on the ground that there was a subsisting caveat lodged against the lands by the respondent on the 12th November 1952.

The appellant's case has been argued principally upon the question of priorities. The learned trial judge took the view that the appellant was at fault in not obtaining the title deeds at the time when he entered into the agreement for sale, and that by such a failure he forfeited his priority. I do not agree with this view of the case. On 14th October 1952 the appellant had obtained an order against the registered proprietors to deliver to him the title deeds of the said land and to execute a valid registrable transfer of their respective shares. He was, according to the order of the Court, entitled to have a memorandum of transfer executed by the Registrar fourteen days later, more than a fortnight in time before the respondent registered his caveat and created a lien under section 134 of the Land Code (Cap. 138).

Hogg in his *Registration of Title to Land Throughout the Empire* says at page 189 :—

"As to what a caveat is and does, the result of numerous cases may perhaps be summed up thus: A caveat is in the nature of a statutory injunction, and is a means of conveying notice to persons who propose to deal with the owner that there are other claims affecting the property; in itself a caveat makes a claim or right neither better nor worse, but marks a point of time at which the merits of competing interests may be judicially determined.

As to how competing interests are affected by the entry of a caveat, the result of the cases seems to be as follows: The Statutory permission to enter a caveat will be regarded as a substantive addition to the ordinary rules of jurisprudence, and these rules (as thus supplemented) will govern the question of priority of interest; in the event of a complete equality of merit other than priority in time of creation of interest, priority of interest will be given to the person who enters (or is the first to enter) a caveat. That the existence of a caveat is really no more than a circumstance, merely causing the ordinary rules applicable to the question at issue to be supplemented accordingly, is shown particularly by cases in which the caveator was unsuccessful."

In my view, both equity and priority are in favour of the appellant. Had the respondent, after he had obtained judgment on 4th December 1952, applied to the Court for an order for the sale of the land under section 134 of the Land Code, I think the Court must have refused such an order.

I would allow this appeal with costs and order the deposit in Court to be paid out to the appellant.

Appeal allowed.

Solicitors: *Bannon & Bailey; Lovelace & Hastings.*

STRAITS STEAMSHIP CO. LTD. v. AZIZ BIN ISMAIL & ORS.

[C. A. (Mathew C.J., Murray-Aynsley C.J.(S), and Hill J.) September 1, 1954]

[Penang — F.M. Civil Appeal No. 8 of 1954]

Master and Servant — Agreement to provide for establishment of Non-Contributory Provident Fund providing gratuities to long-service employees — Construction of provision.

This appeal concerned the construction of the Non-Contributory Provident Fund Rules for daily rated employees of the Sungei Nyok Dockyard belonging to the appellant Company. The Rules resulted from negotiations between the Company and their daily-rated Dockyard employees following a strike. The manner in which payments from the Fund were to be calculated and paid was contained in three clauses which were annexed to the agreement entered into between the Company and the representative of the employees. Under clause A the Company were to credit each employee with a percentage of his basic wage; under clause B an employee (or his personal representatives) subject to the scheme, on termination of his employment for any reason, was to be paid the sum standing to his credit; and under clause C an employee retiring before October 1, 1957, with not less than 10 years' service and having reached the age of 50 years at the date of retirement would be "guaranteed" a payment "including any sums which may be standing to the credit of his account in the Fund," to be calculated in a certain way.

The question before the Court was whether the sum to be paid under clause C was in addition to what was to be paid under clause B.

Held, per Mathew C.J.: the purpose of clause C was to ensure that employees of the Company who had had long service with the Company prior to the institution of the Provident Fund would receive benefits commensurate with the long years of service they had given to the Company prior to the institution of the scheme; those employees who joined a few years before the scheme was instituted would, if they completed ten years' service prior to October 1, 1957, and retired with the approval of the management, receive a guaranteed minimum payment.

Per Murray-Aynsley C.J.(S): as long as it could be shown that a single individual might receive more under clause C than under Clause B, clause C would not be without meaning.

Per Hill J.: the true construction of clause C was that the Company guaranteed that the class of employees specified in that clause would receive on retirement a payment, including any sums payable in accordance with clause A and clause B, which would not be less than the amount calculated in accordance with the terms set out in clause C.

COURT OF APPEAL.

R. D. Hume for the appellants.

M. Knorpel (*Chang Min Tat* with him) for the respondents.

Cur. Adv. Vult.

Mathew C.J.: — As a result of negotiations between the appellant-company and its employees, following a strike, the Non-Contributory Provident Fund Rules for Daily Rated Employees of the Sungei Nyok Dockyard were amended by the company to provide for gratuities to long-service employees. The manner in which payments from the Fund were to be calculated and paid is contained in three clauses which were annexed to the agreement entered into between the company and the representative of the employees on 23rd November 1950. The relevant parts of these clauses read as follows:—

A. "With effect from 1st April, the Company will set aside monthly a sum equal to five per cent of the basic wage paid to each worker on a daily rate of pay to be credited to an account in each man's name. With effect from 18th October 1950, the amount to be credited monthly will be increased to ten per cent of the basic wage.

B. The Company will pay to an employee specified in paragraph A or to his legal personal representatives, the sum standing to his credit in the account at the time, in the event of the employment being terminated for any cause .....

C. An employee retiring before 1st October 1957, with not less than ten years service at the date of retirement, and who has reached the age of fifty years at the date of retirement will be guaranteed a payment including any sums which may be standing to the credit of his account in the Fund calculated as follows:—

An employee will receive the equivalent of three months Provident Fund donations for each completed year of service, based on the basic wages paid to him on retirement. For the purpose of this calculation, one month will be taken to mean a month of twenty-six working days. For the purpose of calculating years of service, the Dockyard will be deemed to have commenced operations under the present Management as at 1st January 1922.

Provided always that the employee retires with the approval of the Management, is not dismissed for misconduct, or is not forced to retire through circumstances occasioned by his own misconduct ....."

The contention of the respondents is that any sum payable under clause C is additional to what is payable under clause B. The appellant-company's contention is that any payment under clause C is inclusive of any sum standing to the credit of an employee under clause B.

The learned trial judge held that clauses B and C were ambiguous. He came to this conclusion on three grounds:—

(i) that in most cases the sum calculated under clause C would be less than under clause B;

(ii) the word "guarantee" had no particular significance;